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and Collective

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16 UNITED STATES DISTRICT COURT
17
18 NORTHERN DISTRICT OF CALIFORNIA

19 REBECCA HASBROOK and
20 CHRISTOPHER GODWIN, individually and
21 on behalf of all others similarly situated,

22 Plaintiffs,

23 v.

24 MOBILEONE, LLC,

25 Defendant.

26 Case No.
27
28

**CLASS AND COLLECTIVE ACTION
COMPLAINT**

INTRODUCTION

Plaintiffs Rebecca Hasbrook (“Hasbrook”) and Christopher Godwin (“Godwin”),
(collectively “Plaintiffs”), file this Class and Collective Action Complaint and Jury Demand
against Defendant, MobileOne LLC (“Defendant” or “MobileOne”) seeking all relief available
under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 et seq. (“FLSA”) on
behalf of themselves and all current and former overtime exempt-classified Store Managers
 (“SMs”) who worked at any of Defendant’s locations in the United States; and under the New
Mexico Minimum Wage Act (“NMMWA”), N.M.S.A. 1978 §§ 50-4-1 et seq. pursuant to Rule 23
of the Federal Rules of Civil Procedure on behalf of themselves and current and former overtime
exempt-classified SMs who worked at any of Defendant’s locations in New Mexico. The
following allegations are based on personal knowledge as to Plaintiffs’ own conduct and are
made on information and belief as to the acts of others:

NATURE OF THE ACTION

14 1. Plaintiffs bring this action on behalf of themselves and similarly situated current
15 and former employees of Defendant nationwide who elect to opt in to this action pursuant to the
16 Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., (“FLSA”) and specifically, the collective
17 action provision of 29 U.S.C. § 216(b), to remedy violations by Defendant of the wage and hour
18 provisions of the FLSA that have deprived Plaintiffs and other similarly situated workers of their
19 lawfully earned wages.

20 2. Plaintiffs also bring this action on behalf of themselves and similarly situated
21 current and former employees of Defendant who worked in New Mexico pursuant to Federal
22 Rule of Civil Procedure 23 to remedy violations of the New Mexico Minimum Wage Act 1978 §§
23 50-4-1 et seq. (“NMMWA”) and supporting regulations.

JURISDICTION AND VENUE

25 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337
26 and jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. § 1337.

27 4. Defendant is subject to personal jurisdiction in the Northern District of California.

28 5. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391

because a substantial part of the events or omissions giving rise to the claims occurred in this District.

6. Intradistrict assignment to the San Jose Division is proper pursuant to Local Rule 3-2(c) because a substantial part of the events or omissions giving rise to the claims occurred in Santa Clara County.

7. Defendant is a covered employer within the meaning of the FLSA, with gross revenue exceeding \$500,000 during all relevant times.

THE PARTIES

Plaintiff Rebecca Hasbrook

8. Plaintiff Hasbrook is an adult individual residing in Campbell, California.

9. Plaintiff Hasbrook was employed by Defendant as a SM from on or about June 2017 until on or about April 16, 2019 at MobileOne locations in Cupertino, California and Albuquerque, New Mexico.

10. Plaintiff Hasbrook's written consent to join this action is attached hereto as Exhibit "A."

Plaintiff Christopher Godwin

11. Plaintiff Godwin is an adult individual residing in Fort Stanton, New Mexico.

12. Plaintiff Godwin was employed by Defendant as a SM from on or about August 2018 until on or about June 2019 at a MobileOne location in Fort Stanton, New Mexico.

13. Plaintiff Godwin's written consent to join this action is attached hereto as Exhibit
"B."

Defendant

¹ 14. Defendant MobileOne LLC, is a premium T-Mobile retailer and one of the fastest growing wireless providers in the nation.

¹ <https://www.indeed.com/cmp/T-Mobile-MobileOne-LLC>

15. With over 500 employees,² Defendant operates over 128 retail locations in seven states.³

16. Throughout the relevant period, Defendant employed and/or jointly employed Plaintiffs and other SMs within the meaning of the FLSA and the NMMWA.

17. Defendant had substantial control over Plaintiffs' and other SMs' working conditions and the unlawful policies and practices alleged herein.

18. At all times relevant, Defendant maintained control, oversight, and direction over Plaintiffs and other SMs, including timekeeping, payroll, and other employment practices and procedures that applied to them.

19. Defendant applied the same employment policies, practices, and procedures to all SMs.

20. At all times relevant, Defendant's annual gross volume of sales made or business done was not less than \$500,000.

21. At all times relevant, Defendant has been an enterprise, within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

22. At all times relevant, Defendant was an enterprise engaged in commerce or the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA because Defendant has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have moved in or were produced for commerce by any person, 29 U.S.C. § 203(s)(1).

23. At all times relevant, Plaintiffs and all similarly situated SMs were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

24. Defendant issued paychecks to Plaintiffs and all similarly situated SMs during their employment.

25. Plaintiff and similarly situated SMs worked in excess of forty (40) hours per workweek, without receiving overtime compensation as required by the FLSA or NMMWA.

² <https://www.linkedin.com/company/mobile-one-llc>

³ <https://mobileonellc.com/>

1 26. Pursuant to Defendant's policy and pattern or practice, Defendant did not pay
 2 Plaintiffs and other similarly situated SMs proper overtime wages for hours they worked for its
 3 benefit in excess of forty (40) hours in a workweek.

4 **COLLECTIVE ACTION ALLEGATIONS**

5 27. In the First Cause of Action, pursuant to 29 U.S.C. § 207, Plaintiffs seek to
 6 prosecute their FLSA claims as a collective action on behalf of all persons who are or were
 7 formerly employed by Defendant as SMs, as well as other similarly situated current and former
 8 employees working in comparable positions but different titles, at any time from three years prior
 9 to the filing of this Collective and Class Action Complaint to the entry of judgment in this case
 10 (the "Putative SM Collective").

11 28. Defendant is liable under the FLSA for, inter alia, failing to properly pay overtime
 12 wages to Plaintiffs and the members of the Putative SM Collective.

13 29. There are numerous similarly situated current and former SMs who have not been
 14 paid proper overtime wages in violation of the FLSA and who would benefit from the issuance of
 15 court-supervised notice of this lawsuit and the opportunity to join it. Thus, notice should be sent
 16 to the Putative SM Collective pursuant to 29 U.S.C. § 216(b).

17 30. Similarly situated employees are known to the Defendant, readily identifiable, and
 18 can be located through Defendant's records.

19 31. Plaintiffs and the members of the Putative SM Collective, all of whom regularly
 20 worked more than forty (40) hours in a workweek, were employed as SMs by Defendant.

21 32. Defendant failed to pay Plaintiffs and the members of the Putative SM Collective
 22 overtime compensation for the hours they worked over forty (40) in a workweek.

23 33. Defendant failed to keep accurate records of all hours worked by Plaintiffs and the
 24 members of the Putative SM Collective.

25 34. Throughout the relevant period, it has been Defendant's policy, pattern, or practice
 26 to require, suffer, or permit Plaintiffs and the members of the Putative SM Collective to work in
 27 excess of forty (40) hours per workweek without paying them overtime wages for all overtime
 28 hours worked.

1 35. Defendant assigned the work that Plaintiffs and the members of the Putative SM
 2 Collective have performed, or Defendant was aware of the work they performed.

3 36. The work performed by Plaintiffs and the members of the Putative SM Collective
 4 constitutes compensable work time under the FLSA and was not preliminary, postliminary, or de
 5 minimus.

6 37. Defendant intentionally, willfully, and regularly engaged in a company-wide
 7 policy, pattern, or practice of violating the FLSA with respect to the Plaintiffs and the members of
 8 the Putative SM Collective. This policy, pattern or practice was authorized, established,
 9 promulgated, and/or ratified by Defendant's corporate headquarters. This policy, pattern, or
 10 practice includes but is not limited to:

- 11 a. willfully failing to record all the time Plaintiffs and the members of the
 Putative SM Collective have worked for the benefit of Defendant;
- 12 b. willfully failing to keep accurate time records as required by the FLSA;
- 13 c. willfully failing to credit Plaintiffs and the members of the Putative SM
 Collective for all hours worked including overtime hours, consistent with
 the requirements of the FLSA; and
- 14 d. willfully failing to pay Plaintiffs and the members of the Putative SM
 Collective wages for all hours worked including overtime wages for hours
 in excess of forty (40) hours per workweek.

15 38. Defendant is aware, or should have been aware, that the FLSA requires them to
 16 pay Plaintiffs and the members of the Putative SM Collective an overtime premium for hours
 17 worked in excess of forty (40) hours per workweek.

18 **NEW MEXICO CLASS ACTION ALLEGATIONS**

19 39. Plaintiffs bring the Second Cause of Action under Rule 23 of the Federal Rules of
 20 Civil Procedure, on behalf of a class of persons consisting of all persons who have worked for
 21 Defendant as SMs, or in comparable positions with different titles, in the State of New Mexico
 22 (the "New Mexico Class") at any time between the date three years prior to the filing of this
 23 Complaint and the date of final judgment in this matter (the "New Mexico Class Period").

1 40. Excluded from the New Mexico Class are Defendant's legal representatives,
2 officers, directors, assigns, and successors, or any individual who has, or who at any time during
3 the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is
4 assigned and any member of the Judge's immediate family; and all persons who will submit
5 timely and otherwise proper requests for exclusion from the New Mexico Class.

6 41. The persons in the New Mexico Class identified above are so numerous that
7 joinder of all members is impracticable. The precise number of such persons is not known to
8 Plaintiffs, and the facts on which the calculation of that number can be based are presently within
9 the sole control of Defendant.

10 42. Upon information and belief, the size of the New Mexico Class is at least 50
11 workers.

12 43. Defendant acted or refused to act on grounds generally applicable to the New
13 Mexico Class, thereby making final injunctive relief or corresponding declaratory relief
14 appropriate with respect to the New Mexico Class as a whole.

15 44. The Second Cause of Action is properly maintainable as a class action under
16 Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the
17 New Mexico Class that predominate over any questions solely affecting individual members of
18 the New Mexico Class, including but not limited to:

- 19 a. whether Defendant failed and/or refused to pay Plaintiffs and the New
20 Mexico Class for all hours worked in violation of the NMMWA;
- 21 b. whether Defendant failed and/or refused to pay Plaintiffs and the New
22 Mexico Class overtime pay for hours worked in excess of forty (40) hours
23 per workweek within the meaning of the NMMWA;
- 24 c. the nature and extent of New Mexico Class-wide injury and the appropriate
25 measure of damages for the New Mexico Class;
- 26 d. whether Defendant had a policy of failing to pay workers for time that they
27 work;
- 28 e. whether Defendant failed to compensate Plaintiffs and the New Mexico

Class for all work Defendant required and/or suffered or permitted them to perform; and

f. whether Defendant correctly calculated and compensated Plaintiffs and the New Mexico Class for hours worked in excess of forty (40) per workweek.

5 45. Plaintiffs' claims are typical of the claims the New Mexico Class sought to be
6 represented. Plaintiffs and the other New Mexico Class members work or have worked for
7 Defendant and have been subjected to their policy and pattern or practice of failing to pay
8 overtime wages for hours worked in excess of forty (40) hours per workweek. Defendant acted
9 and refused to act on grounds generally applicable to the New Mexico Class, thereby making
10 injunctive and/or declaratory relief with respect to the New Mexico Class appropriate.

11 46. Plaintiffs will fairly and adequately represent and protect the interests of the New
12 Mexico Class. Plaintiffs understand that, as class representatives, they assume a fiduciary
13 responsibility to the New Mexico Class to represent its interests fairly and adequately. Plaintiffs
14 recognize that as class representatives, one must represent and consider the interests of the New
15 Mexico Class just as one would represent and consider one's own interests. Plaintiffs understand
16 that in decisions regarding the conduct of the litigation and its possible settlement, one must not
17 favor one's own interests over those of the New Mexico Class. Plaintiffs recognize that any
18 resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the
19 best interests of the New Mexico Class. Plaintiffs understand that in order to provide adequate
20 representation, one must remain informed of developments in the litigation, cooperate with class
21 counsel by providing them with information and any relevant documentary material in one's
22 possession, and testify, if required in a deposition and in trial.

23 47. Plaintiffs have retained counsel competent and experienced in class action
24 employment litigation.

25 48. A class action is superior to other available methods for the fair and efficient
26 adjudication of this litigation – particularly in the context of wage litigation like the present
27 action, where an individual Plaintiff may lack the financial resources to vigorously prosecute a
28 lawsuit in federal court against a corporate defendant. The members of the New Mexico Class

1 have been damaged and are entitled to recovery as a result of Defendant's common and uniform
 2 policies, practices, and procedures. Although the relative damages suffered by individual
 3 members of the New Mexico Class are not de minimis, such damages are small compared to the
 4 expense and burden of individual prosecution of this litigation. In addition, class treatment is
 5 superior because it will obviate the need for unduly duplicative litigation that might result in
 6 inconsistent judgments about Defendant's practices.

7 49. This action is properly maintainable as a class action under Federal Rule of Civil
 8 Procedure 23(b)(3).

COMMON FACTUAL ALLEGATIONS

10 50. Consistent with Defendant's policy, pattern, or practice, Plaintiffs and the
 11 members of the Putative SM Collective and New Mexico Class regularly worked in excess of
 12 forty (40) hours per workweek without being paid overtime wages.

13 51. All members of the Putative SM Collective and New Mexico Class primarily
 14 performed the same or substantially similar job duties.

15 52. The primary duties that the Plaintiffs and other SMs regularly performed include,
 16 but are not limited to:

- 17 a. selling phones,
- 18 b. helping customers,
- 19 c. stocking,
- 20 d. troubleshooting phones,
- 21 e. answering calls,
- 22 f. cleaning, and
- 23 g. cold-calling customers.

24 53. Plaintiffs' and the other SM's primary job duties did not include:

- 25 a. hiring,
- 26 b. promotion,
- 27 c. firing,
- 28 d. setting rates of pay, or

1 e. disciplining other employees.

2 54. Plaintiffs' and the other SMs' primary duties did not differ substantially from the
3 duties of non-exempt hourly-paid employees.

4 55. Plaintiffs and the other SMs did not exercise a meaningful degree of independent
5 discretion with respect to the performance of their duties.

6 56. Plaintiffs' and the other SMs' primary duties were customer service related.

7 57. Customer service occupied the majority of the Plaintiffs' and the other SMs'
8 working hours.

9 58. Pursuant to a centralized, company-wide policy, pattern, and practice, Defendant
10 classified all SMs as exempt from coverage by the overtime provisions of the FLSA, NMMWA,
11 and applicable state laws.

12 59. Defendant did not perform a person-by-person analysis of every SM's job duties
13 when making the decision to classify all of them as exempt from the FLSA's and NMMWA's
14 overtime protections, as well as the protections of other applicable state laws.

15 60. Upon information and belief, Defendant's unlawful conduct described in this
16 Collective and Class Action Complaint is pursuant to a corporate policy or practice which
17 minimizes labor costs by violating the FLSA and NMMWA.

18 61. Defendant's failure to pay overtime wages for work performed by the Putative
19 FLSA Collective and New Mexico Class in excess of forty (40) hours per workweek was willful.

20 62. Defendant's unlawful conduct has been widespread, repeated, and consistent.

FIRST CAUSE OF ACTION

Fair Labor Standards Act: Unpaid Overtime Wages

(On behalf of Plaintiffs and the Putative SM Collective)

24 63. Plaintiffs and the members of the Putative SM Collective, reallege and incorporate
25 by reference all preceding paragraphs as if they were set forth again herein.

26 64. Defendant engaged in a widespread pattern and practice of violating the FLSA as
27 detailed in this Collective and Class Action Complaint.

28 65. Plaintiffs consented in writing to be parties to this action pursuant to 29 U.S.C §

1 216(b).

2 66. The Plaintiffs' written consent forms are being filed with this Collective and Class
3 Action Complaint. (Exs. A, B).

4 67. At all relevant times, Plaintiffs and the members of the Putative SM Collective
5 were engaged in commerce and/or the production of goods for commerce within the meaning of
6 29 U.S.C. §§ 206(a) and 207(a).

7 68. The overtime wage provision set forth in 29 U.S.C. §§ 201 et seq. apply to the
8 Defendant.

9 69. The Defendant is an employer engaged in commerce and/or the production of
10 goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

11 70. At all times relevant, Plaintiffs and the members of the Putative SM Collective
12 were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

13 71. The Defendant failed to pay Plaintiffs and other similarly situated members of the
14 Putative SM Collective the overtime wages to which they were entitled under the FLSA.

15 72. Defendant's violations of the FLSA, as described in this Collective and Class
16 Action Complaint, have been intentional and willful, and as such a three-year statute of
17 limitations applies, pursuant to 29 U.S.C. § 225.

18 73. Defendant has not made a good faith effort to comply with the FLSA with respect
19 to the compensation of Plaintiffs and other similarly situated members of the Putative SM
20 Collective.

21 74. As a result of Defendant's violations of the FLSA, Plaintiffs and all other similarly
22 situated members of the Putative SM Collective have suffered damages by being denied overtime
23 wages in accordance with 29 U.S.C. §§ 201, et seq.

24 75. As a result of the unlawful acts of Defendant, Plaintiffs and other similarly situated
25 members of the Putative SM Collective have been deprived of overtime compensation and other
26 wages in amounts to be determined at trial, and are entitled to recover such amounts, liquidated
27 damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29
28 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

New Mexico Minimum Wage Act

(On behalf of Plaintiffs and the New Mexico Class)

76. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

77. At all times relevant, Plaintiffs and the members of the New Mexico Class have been employees and Defendant has been an employer within the meaning of the NMMWA. Plaintiffs and the members of the New Mexico Class are covered by the NMMWA.

78. The overtime wage provision set forth in N.M.S.A. 1978, § 50-4-22 apply to the Defendant.

79. Defendant employed Plaintiffs and the members of the New Mexico Class as an employer in New Mexico.

80. Defendant failed to pay Plaintiffs and the members of the New Mexico Class wages to which they are entitled under the NMMWA. Defendant failed to pay Plaintiffs and the members of the New Mexico Class for overtime at a wage rate of one and one-half times their regular rates of pay.

81. Defendant failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and the New Mexico Class members, but required Plaintiffs and the members of the New Mexico Class to work more than forty hours a week without overtime pay.

82. Due to Defendant's intentional and willful violations of the NMMWA, Plaintiffs and the members of the New Mexico Class are entitled to recover from the Defendant their unpaid wages and an additional amount equal to twice the unpaid or underpaid wages, reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, and such other relief as provided by law pursuant to N.M.S.A. 1978, § 50-4-26.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to the Putative SM Collective. Such notice should inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit, among other things;

B. Unpaid overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Pre-judgment interest and post-judgment interest as provided by law;

D. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendant from continuing its unlawful practices;

E. A reasonable incentive award for the Plaintiffs to compensate them for the time and effort they have spent protecting the interests of other SMs, and the risks they have undertaken.

F. Certification of the New Mexico claims in this action as a class action;

G. Designation of Plaintiffs as New Mexico Class Representatives;

H. An award of damages, appropriate statutory penalties, and restitution to be paid by Defendant according to New Mexico law according to proof;

I. Pre-judgment and post-judgment interest as provided by New Mexico law;

J. Attorneys' fees and costs of the action; and

K. Such other injunctive and equitable relief as this Court shall deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

/s/
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28 **pro hac vice motion forthcoming
Attorneys for Plaintiffs and Proposed Class and
Collective*

EXHIBIT A

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), MobileOne and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate the Shavitz Law Group, P.A. to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.

DocuSigned by:


Signature 77B474...

Rebecca Hasbrook
Print Name

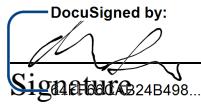
EXHIBIT B

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), MobileOne and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate the Shavitz Law Group, P.A. to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.

DocuSigned by:

Signature 1466008248498...

Christopher Godwin

Print Name